

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
GENERAL DIVISION

**JOHN G. FRANCIES, as Executor of
the Estate of**

PEGGY SUSANNE FRANCIES
3853 Royal Glen Lane
Grove City, OH 43127

Plaintiff,

vs.

**MOUNT CARMEL HEALTH SYSTEM
D/B/A MOUNT CARMEL WEST**
c/o CT Corporation System, Agent
4400 Easton Commons Way, Suite 125
Columbus, Ohio 43219

and

WILLIAM S. HUSEL, D.O.
4757 Aberdeen Avenue
Dublin, Ohio 43016

Defendants.

Case No: 19-CV-_____

Judge _____

Jury Demand Endorsed Hereon

COMPLAINT

FACTS AND JURISDICTION

1. Pursuant to R.C. 2305.21, Plaintiff John G. Francies brings this action as the duly appointed Executor of the Estate of Peggy Susanne Francies for the exclusive benefit of the next of kin.

2. Defendant Mount Carmel Health System ("Mount Carmel") is an Ohio corporation, doing business as Mount Carmel West, which is located in Columbus, Franklin County, Ohio. Mount Carmel provides treatment, by and through its actual and ostensible agents and employees, to those in need of medical care.

3. Defendant William S. Husel, D.O. ("Defendant Husel"), with offices in Franklin County, Ohio, is duly licensed to practice osteopathic medicine by and in the State of Ohio. At all times relevant, Defendant Husel provided treatment for consideration to those in need of medical care as an employee and/or agent of Mount Carmel.

4. Defendants, individually or by and through agents and/or employees, were involved in medical care and treatment of Peggy Francies on October 9, 2017, while she was a patient at Mount Carmel.

5. Peggy Francies was brought to Mount Carmel from Doctor's Hospital on October 8, 2017 due to septic shock relating to renal failure. She required antibiotics and pressors and was admitted to the ICU.

6. Peggy's condition was discussed with Plaintiff and the decision was made to change her code status to DNR and withdraw further care.

7. At that point, Peggy Francies was prescribed and administered a lethal dose of Fentanyl by Defendant Husel.

8. At 8:21 PM on October 9, 2017, Defendant Husel ordered that 200 micrograms (mcg) of Fentanyl be given to Peggy Francies through her IV line for palliative ventilator withdrawal.

9. Mount Carmel policy does not permit Fentanyl be given for palliative ventilator withdrawal.

10. This inappropriate dose of Fentanyl was either ordered negligently and not properly reviewed, or was intentionally prescribed by Defendant Husel for the purposes of hastening the termination of Peggy Francies's life.

11. Despite the inappropriate order of Fentanyl, Mount Carmel's electronic medical records system failed to flag and alert Peggy Francies's medical providers that such an order appeared to be in error. Alternatively, this excessive dose of Fentanyl was flagged and/or alerted by the system as inappropriate, but Defendants ignored the alerts because the order was intended to hasten the termination of Peggy Francies's life.

12. Defendant Husel's order of an inappropriate dosage of Fentanyl was reviewed and approved by Mount Carmel's pharmacist and the medication was made available to Peggy's nurse in the ICU.

13. The pharmacist, knew that the ordered dosage of Fentanyl was inappropriate, served no therapeutic purpose or function, and would only serve to hasten the termination of Peggy Francies's life.

14. Peggy's nurse administered the lethal dosage on October 9, 2017 at 8:29 PM, with full knowledge that such a grossly inappropriate dose of Fentanyl would hasten the termination of Peggy Francies's life.

15. Peggy Francies was pronounced dead at 9:05 PM on October 9, 2017, just shortly after receiving the lethal dose of Fentanyl. Peggy was 73 years old.

16. Plaintiff recently learned that Mount Camel administrators were trying to reach him, to disclose that Peggy Francies received an excessive dosage of Fentanyl from Defendants. He never did receive a call or any type of communication from Mount Carmel.

17. As to the medical claims included herein, an Affidavit of Merit is attached hereto as Exhibit 1, and incorporated herein as contemplated by Civ.R. 10(D)(2).

PLAINTIFF'S CLAIMS FOR RELIEF AGAINST DEFENDANTS

Count I: Battery (Survivorship)

18. Defendants, individually or by and through agents or employees, intentionally ordered and administered a grossly inappropriate and lethal dosage of Fentanyl designed to cause serious harm and death to Peggy Francies, on October 9, 2017.

19. The administration of a lethal dose of Fentanyl to Peggy Francies was harmful and offensive.

20. Peggy Francies did not consent to receiving a lethal dose of Fentanyl from Defendants.

21. Defendants' administration of the lethal dose of Fentanyl to Peggy Francies exhibited a reckless disregard for her health and safety.

22. As a direct and proximate result of the conduct of Defendants, Peggy Francies suffered significant harm and death.

Count II: Medical Negligence (Survivorship)

23. Defendants, individually and/or vicariously by and through agents or employees, were professionally negligent and fell below the accepted standards of care in that they failed to exercise the degree of care required under similar circumstances by, *inter alia*, prescribing, providing, and administering a grossly inappropriate and lethal dosage of Fentanyl to Peggy Francies.

24. As a direct and proximate result of the negligence of Defendants, Peggy Francies suffered severe and permanent injuries resulting from the lethal dosage of Fentanyl he was given, including a loss of life expectancy.

Count III: Intentional Infliction of Emotional Distress

25. In taking the actions described herein, Defendants, either individually or by and through actual or ostensible agents and/or employees, intended to cause serious emotional harm to Peggy Francies and her next of kin, or knew their actions would necessarily result in such emotional harm.

26. Defendants, either individually or by and through actual or ostensible agents and/or employees engaged in extreme and outrageous conduct as described herein.

27. As a direct and proximate result of the intentional conduct of Defendants, Peggy Francies suffered severe and permanent injuries, including a loss of life expectancy and a wrongful death.

28. As a direct and proximate result of the intentional conduct of Defendants, and the injuries and wrongful death of Peggy Francies, Plaintiff's beneficiaries suffered serious emotional distress and harm.

Count IV: Wrongful Death

29. As a direct and proximate result of the intentional acts or omissions, negligence, and/or professional negligence of Defendants as set forth above, Peggy Francies suffered a wrongful death on October 9, 2017.

30. As a further direct and proximate result of the negligence and/or professional negligence of the Defendants and the wrongful death of Peggy Francies, her next of kin have suffered mental anguish as well as pecuniary and non-pecuniary losses, including, but not limited to, loss of society, support, services, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education, and any other items specified in R.C. 2125.02(B).

31. As a further direct and proximate result of the negligence and/or professional negligence of Defendants and the wrongful death of Peggy Francies, the Estate has incurred reasonable burial and funeral expenses.

PLAINTIFF'S CLAIMS FOR RELIEF AGAINST MOUNT CARMEL

Count V: Negligent Credentialing

32. Mount Carmel granted privileges to Defendant Husel, when he was inadequately trained and incompetent to perform critical care and anesthesia services.

33. Defendant Husel was negligent in his treatment of Peggy Francies, and as a direct and proximate result of that negligence, she suffered injuries and a wrongful death.

34. In addition to his negligence in treating Peggy Francies, Defendant Husel is alleged to have been negligent in providing care to additional patients under similar circumstances to those presented in this case.

35. Mount Carmel had a duty to evaluate and determine the ability and competency of Defendant Husel to care for patients commensurate with his licensure and within the applicable standard of care.

36. Mount Carmel, by and through their employees, agents, and staff physician committees, was negligent in selecting or retaining Defendant Husel and/or in granting him staff privileges.

37. Mount Carmel continued to allow, and/or failed to revoke Defendant Husel's privileges at its facilities when it knew or should have known of Defendant Husel's incompetence and/or history of practicing medicine so as to fall below the applicable standard of care.

38. Mount Carmel failed to adequately review and evaluate Defendant Husel's education, character, fitness to practice osteopathic medicine, and his past performance as a specialist.

39. Mount Carmel ignored or failed to investigate the care and treatment provided by Defendant Husel to other patients, including failing to investigate patient complaints and/or other evidence of Defendant Husel's incompetence.

40. Mount Carmel committed other acts or omissions constituting the tort of negligent credentialing, which may be determined during the discovery process or trial.

41. But for the negligence of Mount Carmel, Defendant Husel would not have been granted staff privileges to care for critical care patients at its facilities.

42. But for the negligence of Mount Carmel in selecting and/or retaining Defendant Husel, he would not have been granted staff privileges, and Peggy Francies would not have suffered the above described injuries and damages.

Count VI: Negligent Supervision

43. Defendant Husel, as well as Peggy's nurse and pharmacist were employees of Mount Carmel at all times relevant, acting within the scope of their employment when they provided care and treatment to Peggy Francies, including the ordering, approval, and administration of the grossly inappropriate and lethal dose of Fentanyl.

44. Defendant Husel, as well as Peggy's nurse and pharmacist were not competent to care for patients in the manner in which they engaged while employees of Mount Carmel.

45. Mount Carmel was aware either actually, or constructively, of the incompetence of Defendant Husel, as well as Peggy's nurse and pharmacist.

46. The actions of Defendant Husel, as well as Peggy's nurse and pharmacist, as set forth herein, caused significant and permanent injury to Peggy Francies, including her wrongful death, all of which resulted in damages to her next of kin.

47. Mount Carmel's negligence in supervising its employees, Defendant Husel, as well as Peggy's nurse and pharmacist, was a direct and proximate cause of the harm suffered by Peggy Francies and Plaintiff's beneficiaries.

PUNITIVE DAMAGES

48. The conduct of Defendants could only result from Mount Carmel's systemic deficiencies and practices, which Mount Carmel failed to remedy, and which resulted in significant harm to at least 35 patients, including Peggy Francies and another 2 patients within the 2 hours following Peggy's death on October 9, 2017. One such patient, Timothy Fitzpatrick, died just 5 minutes after Peggy, as a result of a lethal dose of Fentanyl.

49. Defendants' engaged in willful, wanton, and reckless misconduct and malice, exhibiting a reckless disregard for the health and safety of their patients, including Peggy Francies, and created a great probability of causing substantial harm.

50. As a direct and proximate result of Defendants' egregious misconduct, Peggy Francies suffered injury and a wrongful death, as set forth above.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, in an amount in excess of \$25,000.00, plus interest, the costs of this action, and any other relief this Court deems just and equitable, including punitive damages for the intentional, egregious, and reckless misconduct of Defendants.

Respectfully submitted,

/s/ Gerald S. Leeseberg
Gerald S. Leeseberg (0000928)
Anne M. Valentine (0028286)

Craig S. Tuttle (0086251)
LEESEBERG & VALENTINE
175 S. Third Street, Penthouse One
Columbus, Ohio 43215
Tel: 614/221.2223
Fax: 614/221.3106
Email: gsl@leesebergvalentine.com
avalentine@leesebergvalentine.com
ctuttle@leesebergvalentine.com
Attorneys for Plaintiff

JURY DEMAND

Plaintiff hereby respectfully demands a jury of eight as to all issues contained herein.

/s/ Gerald S. Leeseberg
Gerald S. Leeseberg

AFFIDAVIT OF MERIT

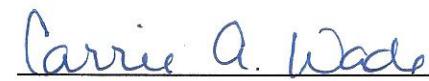
Carl I. Schoenberger, M.D., being first duly sworn, states the following to be true:

1. I submit this Affidavit of Merit in accordance with Ohio Civil Rule 10(D)(2)(a).
2. I am licensed to practice medicine by the Arkansas State Medical Board and am board certified in Internal Medicine, Critical Care and Pulmonology.
3. I devote at least one-half of my professional time to the active clinical practice of medicine, or to its instruction in an accredited school.
4. I have reviewed all medical records reasonably available to Plaintiff concerning the allegations contained in the Complaint.
5. I am familiar with the applicable standards of care in this case.
6. In my opinion, the standard of care was breached by Defendants and such breaches were a direct and proximate cause of injuries and death to Peggy Francies.



CARL I. SCHOENBERGER, M.D.

Sworn to and subscribed before me on March 11, 2019.



NOTARY PUBLIC

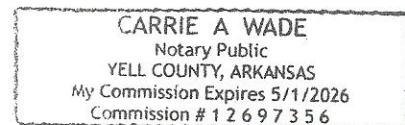


EXHIBIT
1